IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:
Mr. Justice Md. Badruzzaman.
And
Ms. Justice Aynun Nahar Siddiqua

First Appeal No. 85 of 2023.

Mr. Rofiqul Islam Sohel, Advocate
……….For the respondent-applicants
Mr. Abdul Halim Biswas Advocate with
Mr. Mohammad Ataul Gani Advocate,
……..For the defendant-appellant.

Dated: 30.07.2026

This is an application filed by respondent Nos. 1 and 2 seeking the appointment of a receiver. Subsequent to the filing of the application, the respondents also filed two supplementary affidavits, sworn on 28.7.2026, in support thereof, which shall be treated as part of the application. It has been contended by the respondents that respondent Nos. 1 and 2 as plaintiffs instituted Title Suit No. 251 of 2016 before the learned Joint District Judge, 5th Court, Dhaka, against the present appellant seeking partition of the suit properties described in the schedule to the plaint. The appellant entered appearance in the suit and contested the same by filing a written statement. Upon conclusion of the trial, the suit was decreed by the impugned judgment and decree dated 31.01.2023.

It is further stated that the property described in Schedule 'Ka' comprises a six-storied residential-cum-commercial building, while the property described in Schedule 'Kha' is a vacant piece of land. The property described in Schedule 'Ga' comprises a six-storied residential building, and the property described in Schedule 'Gha' consists of a semi-*pucca* tin-shed house. The appellant has remained in exclusive possession of the suit properties and has been collecting monthly rental income amounting to Tk. 7,64,500/- therefrom, as detailed in paragraph 3 of the 1st supplementary affidavit. Out of the said amount, respondent No. 1, Mrs. Maududa Khan, is entitled to Tk. 3,78,187/- per month, respondent No. 2, Ms. Mukta Reme Khan, is entitled to Tk. 1,28,771/- per month, while the appellant is entitled to Tk. 2,57,541/- per month in accordance with the Muslim law of inheritance. But, taking advantage of the order of stay operation of the impugned judgment and decree, the appellant has continued to collect the entire rental income from the suit properties and has been misappropriating the same without paying the respondents their respective shares. Plaintiff-Respondent No. 1, is the mother of the appellant who is an elderly lady suffering from various ailments, including pancreatic cancer, and is experiencing severe financial hardship in meeting the expenses of her medical treatment. She is presently residing with her daughter, respondent No. 2, at the residence of her son-in-law. Respondent No. 2 is also facing serious financial difficulties in maintaining both her mother and her own family. In such circumstances, the appointment of a receiver is necessary to protect the interests of all the parties, to ensure the proper management of the suit properties, and, above all, to facilitate the urgent cancer treatment of respondent No. 1 pending the disposal of the appeal.

The appellant filed a counter-affidavit as well as a supplementary affidavit sworn on 29.07.2026 opposing the application and denying the material averments made therein. It has been contended that the amount of rental income stated in the application is incorrect and grossly exaggerated. The appellant has been maintaining respondent No. 1 and has been bearing all her medical expenses. Apart from providing for her day-to-day maintenance, he has been paying her a sum of Tk. 13,000/- and Tk. 18,225/-per month for other expenses. The residential building standing on the 'Ka' Schedule suit property was constructed at his own expense, partly from his personal funds and partly through loans obtained from financial institutions in the names of himself and respondent No. 1. Respondent No. 1 has failed to pay the instalments of the loan standing in her name, and that the appellant has been paying not only the instalments of his own loan but also those payable by respondent No. 1. As per his allotted *saham*, he receives Tk. 1,41,000/- per month from the properties described in Schedule 'Ka'; Tk. 29,000/- per month from the properties described in Schedule 'Ga'; and Tk. 6,000/- per month from the property described in Schedule 'Gha'; aggregating to Tk. 1,76,000/- per month by way of rent. He further contended that he incurs monthly expenditure amounting to Tk. 1,84,000/- towards utility charges, including electricity, gas, water, and holding tax, as well as the salaries of security guards and other employees, besides repayment of loan instalments, as detailed in paragraph No. 8 of the supplementary counter-affidavit. The present application has been filed solely with the intention of harassing him and is, therefore, devoid of merit and liable to be rejected.

Mr. Rofiqul Islam Sohel, the learned Advocate appearing on behalf of the respondent-applicants, submits that although the plaintiffs-respondents obtained a decree from the trial Court, they have been deprived of the fruits of the decree inasmuch as the operation of the impugned judgment and decree has been stayed at the instance of the appellant. He further submits that the plaintiffs, being the major co-sharers in the suit properties, have been unlawfully kept out of possession thereof.

Learned Advocate further submits that plaintiff-respondent No. 1 is an elderly lady suffering from various ailments, including pancreatic cancer, and is in urgent need of funds for her cancer treatment. He further submits that the defendant-appellant neither takes care of her nor bears any of her medical expenses. Consequently, she is presently residing with respondent No. 2 at the residence of her son-in-law, who himself is facing serious financial difficulties in maintaining his family as well as meeting the medical expenses of respondent No. 1 and that the defendant-appellant, being in exclusive possession and control of the suit properties, has been collecting the rents from the tenanted premises and appropriating the entire rental income to himself, thereby depriving the plaintiffs of their lawful shares and entitlements.

He, therefore, contended that the appointment of a receiver is necessary to safeguard and protect the interests of the plaintiffs during the pendency of the appeal. In the absence of such an appointment, and unless the respondents are paid their respective shares of the rental income generated from the suit properties, they will suffer irreparable loss and injury.

In support of his contention, the learned Advocate has placed reliance upon the decisions in *Shamsuddin Ahmed and others vs. Government of Bangladesh and others*, 45 DLR 675; *Most. Umme Shaheda Akhter Rina and others vs. Ayub Ali and others*, 17 MLR (AD) 235; and *Abdul Haque vs. Mohammad Hashem alias Abul Hashem and others*, 23 BLT (AD) 2.

Mr. Abdul Halim Biswas the learned Advocate appearing with Mohammad Ataul Gani learned Advocate, on behalf of the defendant-appellant, submits that there is no apprehension of any waste, mismanagement, deterioration, or dissipation of the suit properties so as to warrant the appointment of a receiver. He further contends that the residential building standing on the 'Ka' Schedule joint property was constructed partly from the appellant's own funds and partly from loans obtained from financial institutions in the names of the appellant and respondent No. 1. He further contends that respondent No. 1 has failed to pay the instalments of the loan standing in her name, with the result that the appellant has been paying not only the instalments of his own loan but also those payable by respondent No. 2 out of the rental income derived from the suit property.

The learned Advocate further submits that the appellant has been paying a substantial amount to respondent No. 1 towards her maintenance and livelihood and has also been bearing the medical expenses of his mother. He further submits that the appellant has been meeting all utility expenses, paying the salaries of the security guards and other employees, and paying the loan instalments in respect of the suit properties. He, therefore, contends that the respondents have no legitimate grievance against the appellant.

It was further submitted that a receiver cannot ordinarily be appointed in respect of joint property in the absence of exceptional circumstances or without the consent of the parties, and that, in the facts and circumstances of the present case, no grounds have been made out to warrant such appointment. Accordingly, the instant application is not maintainable and is liable to be rejected.

In support of his submissions, the learned Advocate has relied upon the decision in *Umme Shaheda Akhter Rina and others vs. Ayub Ali and others, 64 DLR (AD) 94*.

We have heard the learned Advocates for the parties, perused the application, the supplementary affidavits, the counter-affidavit, the impugned judgment and decree, as well as the other materials available on record.

Admittedly, the property described in Schedule 'Ka', measuring 0.0825 acre, was jointly purchased by plaintiff No. 1 and Dr. Abdul Malek in equal shares. The properties described in Schedules 'Kha', 'Ga' and 'Gha' were purchased solely by Dr. Abdul Malek, who subsequently died leaving behind plaintiff No. 1, his widow, plaintiff No. 2, his daughter, and the defendant-appellant, his only son, as his legal heirs.

The property described in Schedule 'Ka' comprises a six-storied residential-cum-commercial building, while the property described in Schedule 'Kha' is a vacant piece of land. The property described in Schedule 'Ga' comprises a six-storied residential building, and the property described in Schedule 'Gha' consists of a semi-pucca tin-shed house. The flats in the aforesaid buildings and the tin-shed house have been let out to various tenants. Plaintiff-respondent No. 1 is the mother and plaintiff-respondent No.2 is the sister of the defendant appellant.

According to law, plaintiff No. 1 is entitled to a 50% share in the jointly owned suit property described in Schedule 'Ka', by virtue of the registered deed of sale and 6.25% by inheritance from her deceased husband. She is also entitled to a 12.5% share in the properties described in Schedules 'Kha', 'Ga' and 'Gha' by inheritance. Plaintiff No. 2 and the defendant-appellant, on the other hand, are entitled to 14.58% and 29.17% shares, respectively, in the suit property described in Schedule 'Ka'. They are further entitled, by inheritance from their deceased father, to 29.16% and 58.34% shares, respectively, in the properties described in Schedules 'Kha', 'Ga' and 'Gha'.

It appears from the impugned judgment and decree that the trial Court allotted *saham* to plaintiff No. 1 partly on the basis of her purchase and partly by way of inheritance in accordance with the principles of Mohammedan Law. Plaintiff No. 2 was allotted her *saham* solely by way of inheritance under the said principles. No *saham* whatsoever was allotted to the defendant-appellant by the trial Court, as he neither claimed any *saham* nor sought allotment thereof; rather, he prayed for dismissal of the suit.

It further appears that the plaintiff-respondents are the major co-sharers in the suit properties. It is the specific claim of the plaintiffs, namely the mother and sister of the defendant-appellant, that he neither maintains his mother nor bears any of her medical expenses. The defendant-appellant has asserted that he has been maintaining respondent No. 1, his mother, and bearing her medical expenses. The defendant-appellant further claimed that he has been paying Tk. 13,000/- and Tk. 18,225/- per month to his mother. However, he failed to produce any reliable documentary evidence in support of his claim.

The plaintiff-respondents have specifically contended that the suit properties generate a total monthly rental income of Tk. 7,64,500/-, of which respondent No. 1 is entitled to Tk. 3,78,187/- per month, respondent No. 2 is entitled to Tk. 1,28,771/- per month, and the defendant-appellant is entitled to Tk. 2,57,541/- per month. However, the defendant-appellant stated that, according to his own calculation of his share, he has been receiving Tk. 1,41,000/- per month from the property described in Schedule 'Ka', Tk. 29,000/- per month from the property described in Schedule 'Ga', and Tk. 6,000/- per month from the property described in Schedule 'Gha'. However, he did not disclose the total rental income derived from the suit properties and he further stated that he incurred expenses towards utility charges and other bills, as well as the repayment of loan instalments, amounting in the aggregate to Tk. 1,84,000/- per month. However, he failed to produce any documentary evidence before this Court in support of his claim. Furthermore, although the appellant claims to have constructed a building on a portion of the suit property, being merely a co-sharer, he had no legal authority to raise any construction over any part of the joint property before partition by metes and bounds. Such unilateral construction cannot confer upon him any exclusive right or prejudice the rights and interests of the other co-sharers.

Significantly, the defendant-appellant has not specifically asserted that he has paid or shared any portion of the rental income with the plaintiff-respondents. On the contrary, it appears that he has continued to retain and appropriate the entire rental income from the suit properties to the exclusion of the plaintiff-respondents. The medical documents submitted by the respondents also, prima facie, establish that respondent No. 1 is an elderly lady suffering from pancreatic cancer, a disease requiring highly expensive treatment.

It appears that, the plaintiff instituted the present suit in 2016, and the impugned judgment and decree were passed on 31.01.2023, after more than seven years. Instead of complying with the impugned judgment and decree, the appellant preferred the instant appeal on 15.5.2023 and obtained an order staying the operation of the impugned judgment and decree. Thereafter, the appellant failed to take any effective steps to make the appeal ready for hearing or to have it heard and disposed of. As a consequence, the respondents have been deprived of their legitimate shares and the income accruing therefrom in respect of the suit property for a long period.

In *Ramji Ram and others vs. Saligram*, 14 CWN 248, it has been held that in a partition suit, where a co-sharer entitled to a substantial share is kept out of possession and deprived of benefits, appointment of a Receiver is justified even without proof of waste. The same view is expressed in Suprasanna *Roy vs. Upendra Narayan Roy*, AIR 1914 Cal 439. In *Nurul Hossain & ors. vs. Hasan Banu & ors*, BCR (1983) 52, it has been held that where male co-sharers exclusively collect rent from ejmali property and deprive female co-sharers of their legitimate share, appointment of a Receiver is justified even in the absence of proof of waste.

In *Umme Shahida Akhtar Reena and others vs. Ayub Ali and others*, 64 DLR (AD) 94=17 MLR (AD) 235, the Hon'ble Appellate Division held that mere existence of dispute cannot be a ground for appointment of a Receiver. It further observed that in partition suits, appointment of Receiver should generally be made with consent of parties, particularly in respect of family landed property, and delay in disposal of suit is not a valid ground. However, the principles in *Nurul Hossain vs. Hasan Banu*, BCR (1983) 52 were considered and endorsed the above view where deprivation of female co-sharers and exclusive appropriation of rent justified such appointment.

In *Abdul Haq vs. Mohammad Hashem alias Abul Hashem and others*, reported in 23 BLT (AD) 2, the Hon'ble Appellate Division affirmed the order of the High Court Division appointing a Receiver, there being a specific allegation that the Leave Petitioner had misappropriated the funds derived from the income of the suit property.

In *Shamsuddin Ahmed and others vs. Government of Bangladesh and others*, 45 DLR 675, a Division Bench of the High Court Division observed that there is no bar under Rule 1 of Order XL of the Code of Civil Procedure to the appointment of a Receiver by the appellate Court during the pendency of an appeal.

By now, the question is no longer *res integra*. Order XL of the Code of Civil Procedure confers a wide discretionary power upon the Court to appoint a Receiver whenever it appears to be just, proper, and convenient to do so. In a partition suit, where a co-sharer having a substantial share in the joint property is kept out of possession and deprived of the benefits and income arising therefrom, the appointment of a Receiver is justified even in the absence of proof of waste, mismanagement, or deterioration of the property. Moreover, under Rule 1 of Order XL of the Code of Civil Procedure, the appellate Court has the jurisdiction to appoint a Receiver in an appropriate case during the pendency of an appeal.

Having considered the facts and circumstances of the case, it prima facie appears that the plaintiffs have been kept out of possession and deprived of their lawful share of the rental income, while the defendant-appellant has remained in exclusive possession, control and enjoyment of the suit properties and has been exclusively appropriating the rental income therefrom.

In view of the foregoing, and considering the respective claims of the parties, we are of the view that, in order to safeguard and preserve the income generated from the decretal properties during the pendency of the appeal and to protect the interests of all the co-sharers, this is a fit case for the appointment of a Receiver under the provisions of Order XL of the Code of Civil Procedure.

Accordingly, the application is allowed.

Mr. Md. Monirul Islam Advocate, Bangladesh Supreme Court, Membership No. 5621, Room No. 3028 (Annex Building), Supreme Court Bar, is hereby appointed as Receiver in respect of the suit properties described in the schedules "Ka", "Ga" and "Gha" to the plaint on the following terms and conditions:

(I) The Receiver shall immediately take charge of the management of the tenanted portions of the suit properties and shall collect all rents, license fees and other income accruing therefrom from the tenants and occupants.

(II) The tenants and occupants of the suit properties are hereby directed to pay their respective rents and other dues exclusively to the Receiver until further orders of this Court, and shall not make any payment to any of the parties.

(III) The Receiver shall issue proper receipts for all collections made and shall maintain true and regular accounts of all receipts and expenditures.

(IV) The Receiver shall, after deducting municipal taxes, utility charges, government dues, and all other necessary expenses incurred for the preservation, maintenance, and management of the suit properties, distribute the net rental income among the parties strictly in the following proportions:

1. Respondent No. 1 @ 56.5% from Ka Schedule suit property and 12.50% from Ga and Gha Schedule Suit property.
2. Respondent No. 2 @ 14.58% from Ka Schedule suit property and 29.16% from Ga and Gha Schedule Suit property.
3. The appellant @ 29.17% from Ka Schedule suit property and 58.34% from Ga and Gha Schedule Suit property.

It is, however, made clear that the receiver shall not discharge any loan instalments in respect of loans obtained either in the name of the defendant-appellant or in the name of any of the respondents. The liability for payment of such outstanding dues shall continue to rest solely upon the respective borrowers.

(V) The Receiver shall deposit the respective shares of the parties into their nominated bank accounts or, if no such accounts are furnished, shall deposit the said amount in the account of the Registrar General of this Court, subject to further orders.

(VI) The Receiver shall not induct any new tenant, create any tenancy or license, execute any lease or agreement, alter the nature or character of the suit properties, or create any third-party interest therein without obtaining prior leave of this Court.

(VII) The appellant, the respondents, and all tenants and occupants of the suit properties shall render all necessary assistance and cooperation to the Receiver and shall not obstruct or interfere with the Receiver in the discharge of his/her duties.

(VIII) The Receiver shall submit a statement of accounts before this Court once every three months, or at such intervals as may be directed by this Court, showing the amounts collected, the expenses incurred, and the amounts distributed amongst the parties.

(IX) The Receiver shall be entitled to a consolidated remuneration of Tk. 30,000/- per month, to be paid out of the rental income collected from the suit properties.

(X) The appointment of the Receiver shall remain effective until disposal of the appeal or until further orders of this Court, whichever is earlier. The Receiver shall function under the supervision and control of this Court and shall faithfully carry out the directions contained in this order.